IN THE HIGH COURT OF JUDICATURE
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MR JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION NO :2685 of 1998

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Dated: 13th June 2007.

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Between:

B.Ramulu, S/o Appa Rao, aged about 42 years, service, R/o Kakinada, East Godavari District.

..... PETITIONER

AND

The State of Andhra Pradesh, rep. By its Prl.Secretary to Government, Social Welfare Department, Secretariat Buildings, Hyderabad and others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

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W.P.NO.2685 OF 1998

ORAL ORDER:

This writ petition has been filed calling in question the validity of the orders passed by the Collector, East Godavari, on 21-12-1997, holding that the social status certificate issued in favour of the writ petitioner recognising him as a Scheduled Tribe candidate, as he belongs to Valmiki Community, be cancelled and he is ordered to be declared as a member belonging to Scheduled Caste, as he belongs to Mala Community, in fact.

It is not in dispute that prior to the passing of the impugned order, the District Collector has put the writ petitioner on notice through his proceedings dated 18-03-1997 proposing to cancel the certificate of social status issued in his favour recognising him as a member belonging to Scheduled Tribe.

The State Legislature has enacted the Andhra Pradesh (SC, ST & BCs) Regulation of Issue of Community Certificates Act, 1993 (for short, 'the Act') and Act No.16 of 1993, which was brought into force with effect from
16-05-1997. Therefore, the action for the purpose of cancellation of the community certificate issued in favour of the writ petitioner has commenced prior to Act No.16 of 1993 coming into force. To deal with such contingencies,

Provision had been made in Section 5 of the Act. It will be useful to extract Section 5(1) of the Act, which is as under:

> " **5. Cancellation of false Community Certificate :--** (1) Where, before or after the commencement of this Act a person not belonging to any of the Scheduled Castes, Scheduled Tribes or Backward Classes has obtained a false Community Certificate to the effect that either himself or his children belongs to such Castes, Tribes or Classes, the District Collector may either suo motu or on a written complaint by any person, call for the record and enquire into the correctness of such certificate and if he is of the opinion that the certificate was obtained fraudulently, he shall, by notification, cancel the certificate after giving the person concerned an opportunity of making a representation:
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> Provided that where an enquiry into the genuineness of a community certificate issued prior to the commencement of this Act has commenced and is pending at such commencement, the record thereof shall be transferred by the concerned authority to the District Collector and he shall continue the enquiry and conclude the same under this sub-section."

Thus, where an enquiry into the genuineness of a community certificate issued prior to the commencement of this Act, has commenced and the same is pending at

the time of commencement of the Act, the record thereof shall be transferred by the concerned authority to the District Collector, who shall continue the enquiry and conclude the same under the said section.

For regulating the exercise of power under the various provisions of this Act, Rules have been framed in terms of Section 20 of the Act. They are called; The Andhra Pradesh Scheduled Castes, Scheduled Tribes and Backward Classes Issue of Community, Nativity and Date of Birth Certificates Rules, 1997 (for short, 'the Rules'), which have been notified through G.O.Ms.No.58, Social Welfare (J), dated 12-05-1997.

Rule 5 provided for detailed procedure to be followed before a community certificate is cancelled. It contemplated examination and enquiry of the merits and demerits of the claim by a District Level Scrutiny Committee comprising of several members as detailed in Rule 8 of the Rules.

The short question raised by the writ petitioner in this case is that while passing the impugned order, in terms of the proviso to Section 5 of Act 16 of 1993, the District Collector has dispensed with the detailed procedure spelt out under Rule 5 of the Rules. Therefore, for denying an appropriate and reasonable opportunity of establishing his case before the Scrutiny Officer, the petitioner had suffered prejudice by the unilateral orders of cancellation of his community certificate as a member belonging to the Scheduled

Tribe.

The learned Government Pleader for Social Welfare tried to counter this aspect of the matter by pointing out that since the issue has been enquired into by initiating proceedings prior to coming into force of Act No.16 of 1993, there is no further necessity to comply with the requirement of following the detailed procedure prescribed under Rule 5 of the Rules.

I am afraid, the answer furnished on behalf of the respondents is not tenable, inasmuch as Section 5 of the Act had conferred power upon the District Collector to enquire into and cancel any community certificate that was issued prior to coming into force of Act No.16 of 1993, but however, such an exercise has got to be regulated in terms of the procedure contemplated under Rule 5 of the Rules. Therefore, to this extent, a right conferred on the writ petitioner to the procedural safeguard cannot be short-circuited.

In this view of the matter, the orders passed on 21-12-1997 by the District Collector are *set aside*, but however, it shall be treated purely as a show-cause notice so that the writ petitioner will counter the allegations levelled against him in the order dated 21-12-1997. The writ petitioner is, therefore, directed to submit his detailed explanation to the District Collector, East Godavari at Kakinada on or before 16-07-2007, considering the contents of the order passed by the

District Collector on 21-12-1997 as provisional conclusions and on that basis the District Level Scrutiny Committee will provide him with an opportunity of hearing on a date, which will be convenient to it, which shall not be later than 17—09-2007. On the basis of the enquiry, the said Scrutiny Committee will conclude the issue and make-over the file to the District Collelctor at Kakinada, who will then pass final orders in terms of the proviso to Section 5 of the Act. The entire exercise shall be completed as expeditiously as possible.

With this, the writ petition stands disposed of. No costs.

Nooty Ramamohana Rao, J

mrk

13th June 2007.